

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 960 of 1992

with

APPEAL FROM ORDER No 376 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgement?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

GOPALDAS DECEASED BY HIS HEIRS SULOCHANABEN GOPALDAS SHAH

Versus

NATVARLAL THAKORLAL DALAL

Appearance:

1. Civil Revision Application No. 960 of 1992
MR NM KAPADIA for Petitioners
M/S.VYAS ASSOCIATES for Respondent No. 1, 3, 4
MR DD VYAS for Respondent No. 2
 2. Appeal from Order No 376 of 1992
MR NM KAPADIA for Petitioners
MR UM JADEJA for Respondent No. 1, 2, 3, 4
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CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 04/08/2000

ORAL JUDGEMENT

By consent of parties, both the C.R.A. and the A.O. are ordered to be heard together as they pertain to same subject matter and between the same parties. So far as C.R.A.No.960 of 1992 is concerned, the same has been filed by the petitioner, who is the original defendant, against whom the respondents herein have filed Special Civil Suit No.62 of 1992, in the Court of Civil Judge (S.D.), at Surat. The said suit has been filed by the respondent-plaintiffs on the ground that the plaintiff is a registered public trust and the said Trust is having property as mentioned in paragraph 2 of the plaint, situated at Ward No.11, Nondh No.12/72-73, situated in the City of Surat. That in the part of the said premises, there is a temple of Thakoreji and that the defendant was engaged as a Pujari in the said temple. For the reasons mentioned in the plaint in paragraphs 2 and 3, the plaintiff-Trust decided to remove the defendant as Pujari and he was asked to stop the use of the properties, which were in his possession as a Pujari. Since the defendant did not accede to the request of the plaintiff, the plaintiff-Trust has filed the aforeaid suit with the prayer that the defendant had no right, title or interest to occupy or use the suit property and that he should be directed to hand over possession of the ornaments, etc. The aforesaid suit is pending before the learned trial Judge.

Before the aforesaid suit was filed by the plaintiffs, the defendant of Special Civil Suit No.62 of 1992 has filed a suit before the Small Causes Court at Surat, being Small Civil Suit No.33 of 1992, wherein he has asked for permanent injunction restraining the defendants of that suit (plaintiffs of Special Civil Suit No.62 of 1992) from disturbing his possession in the suit property in any manner. He also prayed for injunction that the defendants should not disturb his tenancy rights in the suit property in any manner. Said suit is also pending and accordingly, both the suits, i.e. Special Civil Suit No.62 of 1992, as well as Small Civil Suit No.33 of 1992, are pending for trial.

On behalf of the present petitioner, who is the defendant of Special Civil Suit No.62 of 1992, an application was submitted at Exhibit 15 before the learned trial Judge, wherein it was prayed that before the institution of the present suit by the Trustees, he

has already instituted suit against them in the rent court to protect his tenancy, being Small Civil Suit No.33 of 1992, wherein he has asserted his tenancy rights in the suit property. It is stated in the said application that since the subject matter of both the suits is same and since his earlier instituted suit is already pending in the Small Causes Court, the present Suit, being Special Civil Suit No.62 of 1992, should be stayed under the provisions of Section 10 of CPC.

The learned trial Judge, after hearing both the sides, came to the conclusion that so far as the suit of the present petitioner is concerned, the same is filed in the Rent Court, being Small Civil Suit No.33 of 1992. He found that the subject matter of both the suits are different and both the courts are having different jurisdictions, one is exercised by the Small Causes Court, and the other by the regular court. In the aforesaid view, it was found that the provisions of Section 10 are not attracted. Accordingly, the said application was rejected, against which the original defendant of Special Civil Suit No.62 of 1992 has filed the present revision application.

At the time of hearing of this revision application, on behalf of the respondents herein, who are the original plaintiffs of Special Civil Suit NO.62 of 1992, it was pointed out that an application was given before the District Court for transferring small civil suit to the Court of Civil Judge (S.D.), Surat, wherein the Special Civil Suit No.62 of 1992 is pending and that it has been further pointed out by Mr.Vyas for the respondents that the learned District Judge has already transferred the small civil suit to the Court of Civil Judge (S.D.), Surat, wherein Special Civil Suit No.62 of 1992 is pending. He, therefore, pointed out that both the suits are going to be heard by the same Judge and same court in view of the transfer order. He, therefore, submitted that in view of the said fact, this Court may not interfere with the impugned order, by which application under Section 10 is rejected.

Having heard the learned Advocates of both the sides, I am of the opinion that the order passed by the learned trial Judge cannot be said to be bad in law or without jurisdiction. The suit filed by the present petitioner herein before the Rent Court is under the provisions of the Rent Act. The Rent Court cannot go into the question of title. As against that, Special Civil Suit No.62 of 1992 is filed for a declaration and injunction and the subject matter of the same can be

tried only by a regular court and not by the rent court. Both the courts exercise jurisdiction under different provisions of law. The Rent Act proceedings are required to be decided under the provisions of Section 28 of the Rent Act. In that view of the matter, even though the subject matter involved in both the suits may be the same, the nature of proceedings is entirely different. In that view of the matter as well as especially when the rent suit is now ordered to be heard by the Civil Judge (S.D.), Surat, before whom the Special Civil Suit is pending, I do not find any ground for interfering with the order of the trial Judge. In that view of the matter, so far as C.R.A. No. 960 of 1992 is concerned, the same is required to be rejected and rule is required to be discharged.

So far as A.O.No.376 of 1992 is concerned, the said appeal arises out of an order passed by the learned trial Judge below Exhibit 5 in Special Civil Suit No.62 of 1992. The original defendant of that suit has preferred this Appeal from Order. Before admitting the Appeal from Order, on 1.12.1992, this Court passed the following order on 25.11.1992 :-

"... Ad-int. relief was ordered to be continued from time to time. It, however, appears that papers of C.A.No.3432/92 are not traceable. In this circumstance, the order is required to be passed in the main matter, i.e. A.O.No.376/92.

S.O. to 30th Nov. '92.
Status-quo is ordered to be continued till then "

It was submitted by Mr.Vyas that this order is in existence since long and since the said order is acted upon by the parties, he has no objection if this order is continued till the Special Civil Suit No.62 of 1992 is decided by the learned trial Judge. Mr.Kapadia, learned Advocate for the appellant in the Appeal from Order, has also submitted that in the interest of justice, the interim order, which is in force since 25.11.1992, may be allowed to be continued till the suit is disposed of. In the facts and circumstances of the case, therefore, I direct that during the pendency of the aforeaid Special Civil Suit No.62 of 1992, the appellants are permitted to use one room, admeasuring 16' x 22' as mentioned in Commissioner's report Mark A, dated February 12, 1992 and also a room, admeasuring 18' x 14' as mentioned at page 4

of the report. The appellants are also permitted to use the room admeasuring 18' x 20', which is occupied and used as mentioned at page 14 and room admeasuring 18' x 15' as mentioned at page 16. In substance, this appeal is disposed of as per the interim order granted by this Court (Coram : C.K. Thakkar, J., as he then was) on 25.11.1992. It is directed that the Trust will not hold meeting in any of the aforesaid rooms, which are allowed to be used by the present appellant. However, for use of other rooms, if use of any passage is required, the present appellant will not prevent the entry for going to other rooms, which are not subjected to injunction order, and which is allowed to be occupied by the present appellant.

Subject to what is stated above, this Appeal from Order is accordingly partly allowed in the aforesaid terms.

Accordingly, following orders are passed :-

C.R.A. is dismissed. Rule is discharged with no order as to costs.

Appeal from Order is partly allowed, with no order as to costs.

(P.B. Majmudar, J.)

(apj)